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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,333	11/26/2003	Damien Galand	Q78594	8615
23373 7590 05/26/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
KANG, SUK JIN				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/721,333

Applicant(s)

GALAND ET AL.

Examiner

SUK JIN KANG

Art Unit

2419

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. **Claims 1-11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's own **Admitted Prior Art** (hereinafter AAPA) in view of **Gai et al.** (hereinafter Gai) (U.S. Patent # 6,434,624 B1), and further in view of **Raz et al.** (hereinafter Raz) (U.S. Patent # 6,529,515 B1).

Consider **claims 1, 10, and 11**, AAPA discloses a method and a device for accessing a telecommunication network (access device, R_B, figure 1) comprising means for transmitting data flows (applicant's specification, page 2, lines 3-7) between at least one first telecommunication client (client, B, figure 1) connected to the said telecommunication network (telecommunication network, N, figure 1) by means of an access network (access network, N_B, figure 1) possessing throughput performances lower than the said telecommunication network (applicant's specification, page 2, lines 25-27) and at least one second telecommunication client (server, S, figure 1) accessible through the said telecommunication network (telecommunication network, N, figure 1), the said information flows being organised in sessions (applicant's specification, page 2, lines 3-7), each data flow of one and the same session providing communication between the same telecommunication clients (applicant's specification, page 2, lines 3-17).

However, AAPA may not expressly disclose degradation means for degrading at least one quality parameter of at least one of said data flows in order to compensate for the difference in throughputs between the said telecommunication network and the said access network.

Nonetheless, in the same field of endeavor, Gai discloses degradation means (intermediate device and Local Policy enforcer, 210, figure 3) for degrading at least one quality parameter of at least one of said data flows in order to compensate for the difference in throughputs between the said telecommunication network and the said access network (column 3, lines 47-56; column 5, lines 20-27; column 6, line 67; column 7, lines 1-4, 8-13, and 39-52; the policy enforcer monitors traffic flows and enforces policy or service treatments, which may include degrading of quality parameters of the flows, in order to modify traffic flows based on bandwidth and other considerations).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate degrading quality parameters of data flows as taught by Gai with the device as disclosed by AAPA for the purpose of communicating data flows between networks of different throughput.

However, AAPA, as modified by Gai, may not expressly disclose making use of a module associated with each session, for carrying out the said degradation, the said module being determined by the said first client; and said module relates to at least an impact of a degradation of at least one quality parameter on the quality of at least one of said data flows.

Nonetheless, in the same field of endeavor, Raz discloses making use of a module (active packets; column 4, lines 15-18) associated with each session (column 4, lines 51-59 and 65-67; column 5, lines 1-5), for carrying out the said degradation (abstract; column 2, lines 37-49; network management functions), the said module (active packets containing programs) being determined by the said first client (column 4,

lines 51-67; column 5, lines 1-9; column 10, lines 31-33); and said module relates to at least an impact of a degradation of at least one quality parameter on the quality of at least one of said data flows (column 4, lines 51-59; column 5, lines 10-17; column 6, lines 4-10 and 41-47; active packets are impacted by resources consumed by each session in relation to a degrading of a quality parameter of a data flow).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a module associated with each session as taught by Raz with the device as disclosed by AAPA, as modified by Gai, for the purpose of providing a direct method to modifying data flow sessions.

Consider **claim 2**, AAPA, as modified by Gai and Raz, discloses the claimed invention, but may not expressly disclose the said module principally consists of executable code allowing the degradation of the said at least one.

Nonetheless, Raz further discloses the said module principally consists of executable code allowing the degradation of the said at least one quality parameter (column 4, lines 57-60; column 5, lines 1-23).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a module consisting of executable code as taught by Raz with the device as disclosed by AAPA, as modified by Gai and Raz, for the purpose of providing a direct method to modifying data flow sessions.

Consider **claim 3**, AAPA, as modified by Gai and Raz, discloses the claimed invention, but may not expressly disclose the said module is transmitted in the payload of an active packet transmitted by the said first client.

Nonetheless, Raz further discloses the said module is transmitted in the payload of an active packet transmitted by the said first client (column 4, lines 14-18 and 57-60; column 5, lines 1-23).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a module transmitted in the payload of an active packet as taught by Raz with the device as disclosed by AAPA, as modified by Gai and Raz, for the purpose of providing a direct method to modifying data flow sessions.

Consider **claim 4**, AAPA, as modified by Gai and Raz, discloses the claimed invention, but may not expressly disclose the said module is downloaded from a code server.

Nonetheless, Gai further discloses the said module is downloaded from a code server (host/server, 222, figure 2; column 6, lines 11-27).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a program downloaded from a code server as taught by Gai with the device as disclosed by AAPA, as modified by Gai and Raz, for the purpose of providing a direct method to modifying data flow sessions.

Consider **claim 5**, AAPA, as modified by Gai and Raz, discloses the claimed invention, but may not expressly disclose the said module principally consists of a set of tables giving the correspondence, for each data flow of the said session, the quality parameters and the impacts of a degradation of these quality parameters on the quality of the said data flow.

Although, AAPA, as modified by Gai and Raz, may not explicitly disclose the module principally consists of a set of tables giving the correspondence, for each data flow of the said session, the quality parameters and the impacts of a degradation of these quality parameters on the quality of the said data flow, nonetheless, it would have been obvious to a person of ordinary skill in the art for a module (active packets containing active programs containing code used to perform specific tasks, i.e. parameter degrading functions, during a session on the network as taught by Raz; column 4, lines 65-67; column 5, lines 1-5; column 9, lines 7-12 and 31-33; column 10, lines 31-33) to consist of a set of table in order to execute the function of claimed invention for the purpose of effectively organizing quality parameters and other quality information of data flows to be utilized in modules/active packets.

Consider **claim 6**, AAPA, as modified by Gai and Raz, discloses the claimed invention, but may not expressly disclose the said module principally consists of a set of mathematical expressions linking, for each data flow of the said session, the quality parameters and the impacts of a degradation of these quality parameters on the quality of the said data flow.

Although, AAPA, as modified by Gai and Raz, may not explicitly disclose the module principally consists of a set of mathematical expressions linking, for each data flow of the said session, the quality parameters and the impacts of a degradation of these quality parameters on the quality of the said data flow, nonetheless, it would have been obvious to a person of ordinary skill in the art for a module (active packets containing active programs containing code used to perform specific tasks, i.e.

parameter degrading functions, during a session on the network as taught by Raz; column 4, lines 65-67; column 5, lines 1-5; column 9, lines 7-12 and 31-33; column 10, lines 31-33) to consist of a set of mathematical expressions (code, algorithms, programs) in order to execute the function of claimed invention for the purpose of effectively organizing quality parameters and other quality information of data flows to be utilized in modules/active packets.

Consider **claim 7**, AAPA, as modified by Gai and Raz, discloses the claimed invention, but may not expressly disclose an access device in which the said first client determines the said module in cooperation with the end user, in particular by means of configuration parameters.

Nonetheless, Raz further discloses an access device in which the said first client determines the said module in cooperation with the end user, in particular by means of configuration parameters (column 9, lines 13-24).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a first client determining the module with the end user as taught by Raz with the device as disclosed by AAPA, as modified by Gai and Raz, for the purpose of providing a direct method to modifying data flow sessions.

Consider **claim 8**, AAPA, as modified by Gai and Raz, discloses the claimed invention, but may not expressly disclose an access device in which the said module consists of a set of policy rules supplied by a policy server.

Nonetheless, Gai further discloses an access device in which the said module consists of a set of policy rules supplied by a policy server (policy server, 216, figure 2; column 6, lines 4-10).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a set of policy rules from a policy server as taught by Gai with the device as disclosed by AAPA, as modified by Gai and Raz, for the purpose of providing a direct method to modifying data flow sessions.

Consider **claim 9**, AAPA, as modified by Gai and Raz, discloses the claimed invention, but may not expressly disclose Raz further discloses an access device in which the communications with the policy server conform to the CORBA protocol.

Nonetheless, Raz further discloses an access device in which the communications with the policy server conform to the CORBA protocol (column 2, lines 1-5; column 5, lines 39-46).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate communicating with a server by CORBA protocol as taught by Raz with the device as disclosed by AAPA, as modified by Gai and Raz, for the purpose of providing a direct method to modifying data flow sessions.

Response to Arguments

3. Applicant's arguments filed February 2, 2009 have been fully considered but they are not persuasive.

Consider claims 1, 10 and 11, Applicant argues, on pages 7 and 8 of the Remarks, that the cited prior art does not disclose, "degradation means for degrading at least one quality parameter of at least one of said data flows in order to compensate for the difference in throughputs between the said telecommunication network and the said access network, wherein said degradation means makes use of a module associated with each session, for carrying out the said degradation, the said module being determined by the said first client; and said module relates to at least an impact of a degradation of at least one quality parameter on the quality of at least one of said data flows."

The Examiner respectfully disagrees with Applicant's argument because as recited in the above rejections, AAPA as specifically modified by the combination of Gai and Raz discloses a degradation means for degrading at least one quality parameter of at least one of said data flows in order to compensate for the difference in throughputs between the said telecommunication network and the said access network, wherein said degradation means makes use of a module associated with each session, for carrying out the said degradation, the said module being determined by the said first client; and said module relates to at least an impact of a degradation of at least one quality parameter on the quality of at least one of said data flows.

Gai discloses a degradation means (intermediate device and Local Policy enforcer, 210, figure 3) for degrading at least one quality parameter of at least one of said data flows in order to compensate for the difference in throughputs between the said telecommunication network and the said access network (column 3, lines 47-56;

column 5, lines 20-27; column 6, line 67; column 7, lines 1-4, 8-13, and 39-52; the policy enforcer monitors traffic flows and enforces policy or service treatments, which may include degrading of quality parameters of the flows, in order to modify traffic flows based on bandwidth and other considerations).

Raz discloses making use of a module (active packets; column 4, lines 15-18) associated with each session (column 4, lines 51-59 and 65-67; column 5, lines 1-5), for carrying out the said degradation (abstract; column 2, lines 37-49; network management functions), the said module (active packets containing programs) being determined by the said first client (column 4, lines 51-67; column 5, lines 1-9; column 10, lines 31-33); and said module relates to at least an impact of a degradation of at least one quality parameter on the quality of at least one of said data flows (column 4, lines 51-59; column 5, lines 10-17; column 6, lines 4-10 and 41-47; active packets are impacted by resources consumed by each session in relation to a degrading of a quality parameter of a data flow).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the active packets used to carry out specific functions within the network as taught by Raz with the policy enforcer as disclosed by Gai for the purpose of providing a direct method to modifying data flow sessions.

Therefore, the combination of the active packets used to carry out specific functions within the network, as taught by Raz, with the policy enforcer, as taught by Gai, used to monitor traffic flows and enforce policy or service treatments, which may include degrading of quality parameters of the flows, teaches a means to degrade or

modify specific parameters of the traffic flow in order to compensate for throughput or other considerations within the telecommunication network as disclosed by AAPA.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

5. Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Hand-delivered responses should be brought to

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

6. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Suk Jin Kang whose telephone number is (571) 270-1771. The examiner can normally be reached on Monday - Friday 8:00-5:00 EST.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Chirag Shah can be reached on (571) 272-3144. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

*/Suk Jin Kang/
Examiner, Art Unit 2419*

May 19, 2009

*/Gregory B Sefcheck/
Primary Examiner, Art Unit 2419
5-21-2009*